

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 26, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref. No.(s): 16HD-050
16HD-051
HAWAII

Consent to Assign Grant of Non-Exclusive Easement under Land Office Deed No. S-28,372, Franklin C. Wheeler, III and Cynthia J. Shanholt, Assignors, to Opal Point Holdings VI LLC, Assignee, Puuwaawaa, North Kona, Hawaii, Tax Map Key: (3) 7-1-002: portion of 008.

Amend Grant of Non-Exclusive Easement under Land Office Deed No. S-28,372, to add provision to allow easement to "run with the land," thereby authorizing future assignments without the written consent of the Board of Land and Natural Resources, Puuwaawaa, North Kona, Hawaii, TMK: (3) 7-1-002: portion of 008.

APPLICANT:

Franklin C. Wheeler, III and Cynthia J. Shanholt, as Assignors, to Opal Point Holdings VI LLC, a California limited liability company, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Puuwaawaa, North Kona, Hawaii, identified by Tax Map Key: (3) 7-1-002:008, as shown on the attached map labeled Exhibit A.

AREA:

6.163 acres, more or less.

| EASEMENT | AREA |
|--------------|-------------|
| Easement 1 | 1.196 acres |
| Easement 2-A | 2.348 acres |
| Easement 2-C | 1.122 acres |
| Easement 3 | 1.497 acres |

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
 X

CHARACTER OF USE:

Non-Exclusive easement for access and utility purposes.

DCCA VERIFICATION:

ASSIGNOR(S): Not applicable as Co-Assignors are individuals who are not required to register with DCCA.

ASSIGNEE: Not applicable, as Assignee is a California limited liability company, and ownership of a real property interest in the State of Hawaii in and of itself does not require registration with the DCCA.

REMARKS:

At its meeting of February 14, 1986, agenda item F-17, as amended by its meetings of August 11, 1995, agenda item F-14, and September 11, 1998, agenda item D-2, the Board of Land and Natural Resources approved the issuance of the subject easement to Franklin C. Wheeler, III and Cynthia J. Shanholt. Grant of Non-Exclusive Easement under Land Office Deed (LOD) No. S-28,372 dated January 27, 1999 was thereafter issued to Mr. Wheeler and Ms. Shanholt.

The requested assignment of LOD S-28,372 is a result of the sale of the private property benefitted by the easement, identified TMK: (3) 7-1-002: 006, to Assignee Opal Point Holdings VI LLC. Staff is recommending the Board amend the easement to allow it to run with the land it services, thus avoiding any further need to obtain the Board's consent to the assignment of the easement should the owners sell the benefitted private property in the future.

The Assignee had not had a lease, permit, easement or other disposition of State lands terminated within the last five years, due to non-compliance with such terms and conditions. As of July 13, 2016, the Assignors are current and in compliance with all terms and conditions of the subject easement.

RECOMMENDATION:

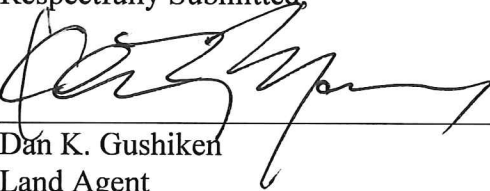
1. That the Board consent to the assignment of the Grant of Non-Exclusive Easement under Land Office Deed No. S-28,372 from Franklin C. Wheeler, III and Cynthia J. Shanholt, as Assignors, to Opal Point Holdings VI LLC, as Assignee, subject to the following:
 - a. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the Amendment of Grant of Non-Exclusive Easement under Land Office Deed No. S-28,372, Opal Point Holdings VI LLC, Grantee, to insert a provision allowing for the easement to run with the land, as stated below:

“This easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (3) 7-1-002: 006, providing that the Grantee shall be required to carry liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee’s estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee’s successors or assigns of the insurance requirement in writing, separate and apart from this easement document.”

The amendment shall further be subject to the following:

- a. The standard terms and conditions of the most current grant of easement amendment document form, as may be amended from time to time; and
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


Respectfully Submitted,



Dan K. Gushiken
Land Agent

August 26, 2016

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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